CORRECTED VERSION

**Advisory Council on Historic Preservation**
**Comments on the Federal Communications Commission's**
**Notice of Proposed Rulemaking, dated May 10, 2017**
**WT Docket No. 17-79.**
June 15, 2017

- Tribal Fees: FCC has coordinated its Tribal Construction Notification System (TCNS) since 2005 under the supervision of FCC personnel. In the 12 year period since its inception, few if any project specific disputes regarding fees to Indian Tribes in the Section 106 process have been referred to the ACHP. Accordingly, we lack meaningful data that either supports or refutes allegations made by Industry that current practices are excessive and are having a deleterious impact on the Section 106 review process. As FCC is aware, the ACHP has recently reviewed the 2001 Fee Guidance Memo, which was developed at FCC's request. We believe that the framework it establishes for when compensation to Indian tribes is appropriate is still sound. We therefore recommend that FCC take a more deliberate approach in monitoring how and when compensation to Indian tribes is appropriate as other agencies, like the Federal Aviation Administration, have done.

  FCC has noted that the ACHP's "Consultation with Indian tribes in the Section 106 Review Process: A Handbook" (2012 Tribal Handbook) clarifies that "the agency or applicant is not required to pay the tribe for providing its views" when the agency is seeking its views to fulfill the agency's legal obligation to consult with a tribe under a specific provision of the Section 106 regulations. Likewise, the Handbook adds that when a federal agency or applicant asks "a tribe for specific information and documentation regarding the location, nature, and condition of individual sites, or even request(s) that a survey be conducted by the tribe… the agency or applicant is essentially asking the tribe to fulfill the duties of the agency in a role similar to that of a consultant or contractor. In such cases, the tribe would be justified in requesting payment for its services, just as is appropriate for any other contractor." The determination as to which role an Indian tribe may be fulfilling in a given review must be made by the FCC, not the ACHP. Further, the ACHP would expect FCC to further clarify when compensation is warranted and what general types of activities might warrant compensation. FCC also must recognize that oftentimes the involvement of Indian tribes may be coordinated by other tribal entities outside Tribal Historic Preservation Offices. In these instances, these other entities, possibly including tribal leaders themselves, may establish protocols for how the tribe consults on cell towers and equipment. We would therefore urge FCC and Industry to work with Indian tribes to gather pertinent facts about how such fees are assessed by the tribes before it determines appropriate solutions.

  FCC's inquiry about whether *the particular request of the applicant determines whether a Tribal Nation is acting as a contractor or consultant* is puzzling. FCC applicants and licensees involved in Section 106 reviews should be informed by FCC on how to determine when tribes may need to gather information and conduct research to determine whether properties of religious and cultural significance to them may be present off tribal lands, and within the APE The Section 106 regulations at 36 CFR § 800.2(c)(2)(ii)(D) state that federal agencies should be aware that often historic properties of religious and cultural significance are located on ancestral, aboriginal, or ceded lands. As such, one would anticipate that in most instances research is required before

tribal sites can be evaluated and a report provided to an applicant or licensee. FCC could reaffirm this principle in its guidance so that applicants and licensees are no longer confused about the role Indian tribes have to assume when conducting Section 106 reviews.

FCC recognizes that applicants and licensees may fail at times to provide "*all the information reasonably necessary for the Indian tribe or NHO to evaluate whether historic properties of religious cultural significance may be affected.*" This requirement to provide such information is appropriate and will ultimately assist FCC, as well as the applicant or licensee, in meeting the Section 106 requirement to *take into account* effects of the undertaking on historic properties. We urge FCC to review OMB forms 620 and 621 to determine if they are sufficient to meet this requirement. The ACHP would further encourage FCC to document when a cultural resources report includes information that addresses Indian tribes and NHOs. If this information is not provided, then it may be appropriate for an Indian tribe or NHO to require that additional surveys be conducted to identify and evaluate historic properties and complete the review required under Section 106.

Recognizing the assessment and payment of fees in Section 106 reviews is essentially a business transaction in which the ACHP has no role or particular expertise, the parameters for establishing and paying such fees must be addressed and resolved by FCC. We note that FCC is attempting to determine if adhering to the statements in the ACHP's 2012 Tribal Handbook "that an applicant is free to refuse [payment] just as it may refuse to pay for an archeological consultant" as well as the statement "that the agency still retains the duties of obtaining the necessary information through reasonable methods" impacts the FCC's analysis of payments for tribal participation. To this inquiry, the ACHP would ask FCC whether it has issued surveys to Indian tribes to address how and when these statements have applied to their involvement in the review process. If FCC has not collected data regarding applicants' and licensees' refusal of payments to Indian tribes, and the need to gather tribal information by methods other than payments to Indian Tribes, it is difficult for the ACHP to advise FCC. Options exist and are included in the ACHP's 2012 Tribal Handbook for FCC to apply, as needed.

The ACHP cannot opine on the manner in which Indian tribes charge fees, whether it be a flat fee upfront or escalating fees. The ACHP does not have the authority to comment on or resolve disputes regarding the amount of fees that may be charged in the Section 106 process. If FCC's applicants and licensees are not compensating Indian tribes after they have completed the work of a consultant or contractor for an undertaking, FCC needs to resolve these situations and use the agency's policies and procedures to inform their position. However, the ACHP would be amenable to consulting with FCC regarding how it ultimately resolves the question as to when fees should be assessed in the Section 106 process and considering modifications to the ACHP's 2012 Tribal Handbook, as appropriate.

The ACHP recommends that FCC consult with other federal agencies regarding the use of a *bright line test* for an Indian tribe acting as a consultant or a contractor. In addition, the ACHP would consider whether additional guidance would be appropriate to help inform how and when an Indian tribe might be recognized as a consultant or contractor that is supporting an agency in carrying out its responsibilities in Section 106 reviews.

While the ACHP's "reasonable and good faith effort" guidance is intended to ensure that adequate identification and evaluation of historic properties occurs for an undertaking in the Section 106 review, the agency should augment the identification and evaluation process with

guidance regarding its own agency policies. In the case of communications undertakings, FCC should incorporate guidance on indirect effects, tribal consultation, rural landscapes, and transportation corridors into guidance on what constitute a "reasonable and good faith effort" to carry out appropriate identification of historic properties.

FCC has managed the TCNS system with a focus on states and counties since its inception. The ACHP believes that there may be value in focusing on regional areas in which Indian tribes have expressed an interest. Having FCC recognize geographic areas where towers are sited and collocations occur would allow TCNS to be operated in a consistent and predictable manner. For instance, communication projects in the Plains states would always be sent to recognized Indian tribes in that region. Likewise, Indian tribes located in Mid-Atlantic states that have expressed interest in deployment of broadband and other communications activities would be notified by applicants and licensees involved in that area. Such an arrangement could allow Industry to establish efficiencies with Indian tribes regarding the identification and evaluation of historic properties. The ACHP recommends that FCC consider some type of certification by region as long as it does not preclude other Indian tribes from joining in the future. However, such certification should not limit an Indian tribe from changing their interest in areas based upon new information being discovered about an area or region.

The ACHP supports the suggestion that TCNS be modified to retain information on areas where concerns were previously raised and reviews conducted. This efficiency would mimic a SHPO inventory for an area previously reviewed or surveyed, and eliminate the need for duplicate reviews. In accordance with the Section 106 regulations at 36 CFR §800.4(c) (1), *the passage of time, changing perceptions of significance, or incomplete prior evaluations may require the agency official to reevaluate properties previously determined eligible or ineligible.* Confidentiality, as defined in the Section 106 regulations at 36 CFR § 800.11(c) and Section 304 of the NHPA *requires a Federal agency to withhold from public disclosure information about the location, character, and ownership of a historic site when disclosure may cause a significant invasion of privacy; risk harm to a historic property; or impede the use of a traditional religious site by practitioners*. The head of the agency must consult with the Secretary of Interior (SOI), and where that information was developed in the course of a Section 106 review, also consult with the ACHP, to determine who may have access to this information. Therefore, FCC would need to discuss with SOI and the ACHP the feasibility of providing access to confidential information included in TCNS as it may be challenging to obtain tribal endorsement of such an arrangement.

The resolution of disputes under the NPA when an Indian tribe or NHO refuses to comment on presence or absence of effects to historic properties without compensation should continue to be referred to FCC by the applicants. FCC can be guided by the threshold of "reasonable and good faith effort" to identify historic properties in its review. Nevertheless, other factors may need to be considered in evaluating such matters. As stated above, if the Indian tribe or NHO concludes that the applicant is not recognizing the need for them to act as a contractor or consultant, this issue will need to be resolved. Only after the concerns are clearly defined will FCC understand whether it should focus on the adequacy of the reasonable and good faith effort or another issue that may be causing disputes.

- Delays in Section 106 are caused by SHPO reviews. The allegation that the SHPO review process results in significant delays has not been adequately substantiated, nor has any supporting data been provided to the ACHP. The ACHP is aware of occasional anecdotal information over the

years, but rarely has such information included data about financial costs, delays on carriers and the public, or other financial hardships. FCC uses OMB approved forms 620 and 621 for tower siting and collocation projects. Therefore, it should not be difficult for FCC to collect data to document the time and costs of SHPO reviews. Since the next generation technology is rapidly changing, it may be appropriate to compare with SHPOs the costs associated with regular cell towers versus new smaller towers. Perhaps this information can be collected by including financial information and changes that result to undertakings as a result of consultation with SHPOs in proposed revisions to forms 620 and 621, since this information is currently not reviewed and analyzed.

The NPRM asks whether reviews by SHPOs duplicate historic preservation reviews carried out by a Certified Local Government or a governmental authority that issues a Certificate of Appropriateness. SHPOs do not typically carry out local administrative reviews that are related to local zoning and planning requirements. Therefore, to suggest that the SHPO conducts duplicative reviews belies a misunderstanding of the structure of most governments. FCC has monitored the role of Certified Local Governments and governmental authorities since the ACHP began discussing the development of the Nationwide Programmatic Agreements in 2000. It was never envisioned that the role of SHPOs was duplicative to local administrative reviews. Since Certified Local Governments are not all similarly staffed and engaged in the local administrative review process, it is not appropriate to assume that they could substitute for the SHPOs in conducting Section 106 reviews.

- Other NHPA Process Issues: According to FCC, the lack of timely responses by the SHPOs, Indian tribes, and NHOs continue to cause delays in the implementation of telecommunications projects. Although the NPA is explicit about SHPOs, Indian tribes, and NHOs responding within 30 days, this requirement is often overlooked. In an effort to address this issue, FCC should consult with NCSHPO and NATHPO regarding the feasibility of establishing different review periods based on the effects on historic properties. Until FCC has this discussion, the ACHP would be reluctant to assess how review periods should vary for different categories of undertakings. The ACHP agrees that changes in technology have *changed reasonable expectations as to timeliness of responses and reasonable efforts to follow up.* Nevertheless, until FCC explores amending the NPAs as it did with the amended Collocation NPA in 2016, the issue of timeliness may continue to present challenges to applicants deploying new activities.

  The ACHP would have concerns regarding applicants self-certifying their compliance with the Section 106 process in response to the *2005 Declaratory Ruling and* the Good Faith Protocol when Indian tribes and NHOs are non-responsive. FCC should explore other options that are developed in consultation with NCSHPO and NATHPO, including FCC hiring qualified professionals to conduct Section 106 reviews to validate that non-responsive submissions had adequately considered effects to historic properties within an undertaking's Area of Potential Effects (APE). While this is not FCC's primary mission, we believe that such reviews would be the exception rather than the rule and could be a collateral duty for staff working in other areas of FCC's environmental reviews. If the self-certification were adapted outside of an approved Section 106 program alternative, including the existing NPAs, it is questionable whether it would meet FCC's legal obligation to comply with Section 106.

- Batching: The batching process was introduced in the 2014 Program Comment issued by the ACHP for the Positive Train Control (PTC) Wayside Poles and Infrastructure. Since the

implementation of this program had a statutory deadline and numerous poles had to be deployed, the railroad industry encouraged the ACHP to adopt efficiencies to avoid delays in project implementation. The ACHP was advised that the batching approach would be feasible. However, concerns have been raised about the different lengths between poles in urban areas and rural areas. Therefore, FCC would need to consult further with SHPOs and Indian tribes regarding the guidelines that would need to be adopted for batching to be embraced beyond the PTC Program. Any expansion of this program would, at a minimum, need to address geography, ground disturbance, and eligible facilities. Since batching requires an applicant or licensee to explain what the time frame is for deployment in a specific geographic area, TCNS and e-106 forms also would need to be revised to address groups of submissions associated with an applicant's deployment in a target area.

- NEPA/NHPA/Local review Alignments: FCC mentions in the NPRM that facilities requiring federal review must also undergo pre-construction review by local governmental authorities, and asserts the inability to carry out these dual reviews simultaneously can add significant time to the process. FCC inquired whether local permitting, NEPA review, and the Section 106 review can be conducted simultaneously. The ACHP's regulations at 36 CFR § 800.3(b) encourages *the agency official to coordinate the steps of the Section 106 process, as appropriate, with the overall planning schedule for the undertaking and with any reviews required under authorities such as the NEPA, NAGPRA, and agency specific legislation.* FCC, therefore, is encouraged to evaluate this provision and consider how simultaneous Section 106 and NEPA reviews might occur as siting decisions and local administrative reviews are conducted. The timing of coordinated reviews and their ability to minimize delays will need to be assessed after review undertakings around the Nation.

- NHPA Exclusions for Small Facilities: The ACHP is familiar with the next generation technologies of communications infrastructure from its recent issuance of a *Program Comment for Communications on Federal Lands and Property*. FCC is encouraged to consider the uniform procedures set forth in the Program Comment to assist Federal Land Managing and Property Managing Agencies deploy communications projects more efficiently. Since it covers the collocation of antenna on existing communication towers, installation of aerial communications cable, burying communications cable in existing road, railroad, and utility rights-of-way, and construction of new communication towers, FCC should determine what similar efficiencies it might adopt for 5g activities.

- Pole Replacements: The ACHP encourages FCC to consider additional efficiencies for addressing pole replacements since they are a significant component of the new technology. The proposal to exclude Indian tribes and NHOs from the review of these activities requires more extensive upfront consultation with Indian tribes and NHOs who may view these areas differently than archaeologists and other cultural resource experts. The ACHP agrees that the siting of these poles, which are not addressed in the NPA, would met the threshold established for Section 106 review under 36 CFR §800.3(a)(1) as they have the potential to result in effects to historic properties, including National Historic Landmarks, National Parks, and Historic Districts. The decision whether to exclude poles in rights-of-way, regardless of whether they are located in historic districts, would require further consultation with the SHPOs who can provide their "boots on the ground" experience regarding rights-of-way that may extends for miles along linear corridors.

The exclusion from Section 106 reviews for the construction of collocation of communication infrastructure along transportation corridors is a proposal that the ACHP can endorse. Given the proliferation of wireless services on trains, transit, and highways since 2004, it is a given that new facilities are required to expand access to services and to address public safety. The deployment of networks in transportation corridors that use new and smaller technologies, therefore, can be explored to identify measures to potential effects on historic properties. The methods for deployment will need to be fleshed out with other stakeholders to ensure that historic properties are not inadvertently affected, including limiting height and constructing larger facilities. As stated above, FCC needs to consult with Indian Tribes and NHOs before they are excluded from reviewing archeological properties important to them for religious and cultural significance.

- Rights of Way: The ACHP does not oppose discussing revisions to the current right-of-way exclusions regardless of whether the right-of-way is located on a historic property. As stated above, there are categories of historic properties that may need to be exempt from the exclusions. This list would need to be informed by the experience of Industry as well as SHPOs and Indian Tribes regarding siting wireless facilities in existing utility and communications corridors, with the exception of historic districts located totally or in part in NHLs, National Monuments, and National Parks. Further, the role of Tribal Nations and NHOs will need to be considered once their views have been discussed.

- Collocations: FCC recommended further efficiencies in the collocations of antenna during the past year. The ACHP agreed to amend the collocation NPA in 2016 and accepted most of the proposals submitted by FCC in the First Amendment to the Collocation PA. Accordingly, the ACHP is amenable in discussing with FCC what other collocation efficiencies that need to be considered because current practices are often perceived as a barrier to deployment. Please note, however, that local communities should be involved in Section 106 consultations regarding the need to comply with Section 106 for collocations on buildings and other non-tower structures located within 250 feet of the boundary of historic districts. The ACHP negotiated revisions to this exclusion may inadvertently undermine local administrative processes that regulate local efforts to protect historic properties.

  The ACHP supports the suggestion that FCC consider collocations with a fresh eye given the passage of time since the Collocation NPA was negotiated in 2001. We believe it is appropriate to consider excluding from Section 106 review non-substantial collocations on existing structures that do not involve any ground disturbing activities. It may be appropriate to allow collocations of facilities on new structures in urban municipal rights of way; new structures in industrial zones; and/or facilities on new structures in or within 50 feet of existing utility right-of-way within 50 feet of utility rights-of-way. This should not involve ground disturbance activities, however. The type of effects that would limit use of these collocations would need to be negotiated with SHPOs and Indian Tribes, recognizing that negotiations with Indian Tribes and NHOs should occur before their role in collocations is determined. Other Section 106 program alternatives may address specific aspects of collocation. However, further discussions are required to define the effects from collocation activities.

  The proposal to approve collocations once reviewed by local communities is an option worthy of consideration. However, the ACHP recognizes that not all Certified Local Governments operate in the same manner in local governments. This concept will need to be fleshed with the SHPOs

to decide what criteria must be met for local reviews to allow the exclusion of collocations from regular Section 106 reviews. We are particularly concerned about how many CLGs exist throughout the Nation and would be available to implement this efficiency.

- Revisiting Interpretation of Scope of Section 106 responsibilities: The ACHP does not see a reason why the cited evolution of technology and changes in infrastructure deployment would in any way change the FCC's interpretation of its Section 106 responsibilities, as upheld by the D.C. Circuit in CTIA - The Wireless Ass'n v. FCC, 466 F.3d 105 (D.C. Cir. Sept. 26, 2006). The nature of FCC's approvals, which are triggers for its Section 106 responsibilities, has not changed. Moreover, the reasonable foreseeability that towers will continue to need to be constructed to enable the FCC licensed use of spectrum, and therefore the need to consider such construction, remains unchanged as well. See 36 CFR 800.5(a) (1). To the extent that changes in technology may play a role in Section 106 compliance, they may do so in terms of the level of effects on historic properties (e.g., smaller towers and/or antennas may have less of an effect on historic properties) and may perhaps argue for adjusting how such effects are resolved. But, again, they do not change the need for the FCC to comply with Section 106. Therefore, we do not believe it is appropriate to reconsider the status of undertakings subject to Section 106 review per 36 CFR 800.3(a) (1). However, should the FCC wish to revisit the list of undertakings that would be subject to exclusions from further Section 106 review under the NPAs, we are willing to engage with FCC in this discussion along with the other signatories to those agreements. Consultation with Industry, NCSHPO, and NATHPO will be required as applicants and licensees have recommended more extensive changes to FCC's NPAs to address further streamlining of the Section 106 reviews.

- Collocations on Twilight Towers: The ACHP agrees with FCC that after 12 years, measures should be implemented to allow FCC to approve collocations on Twilight Towers following the terms of the Collocation PA or a Program Comment unless a formal complaint is filed with FCC. The Program Comment would be issued by the ACHP and reference the Collocation NPA, as appropriate. Allowing the Twilight Towers to be used for collocation is in the public interest so we will make working with FCC on this matter a priority. FCC notes in the NPRM that most Twilight Towers that have been reviewed were found to have "No Adverse Effect" on historic properties. The ACHP, therefore, agrees with FCC that the remainder may be unlikely to result in adverse effects, and, therefore, could be quickly reviewed and put into service. The NPRM acknowledges the concerns expressed by Indian Tribes regarding collocation on Twilight Towers. Therefore, FCC will need to negotiate with Indian Tribes to determine how they will be allowed to identify sites of religious and cultural significance to them they are proposed for collocation.

  Whatever process is negotiated will need to balance the mistakes from the past with the need for FCC to go forward. If an agreement can be reached with Industry about how to compensate for adverse effects caused by Twilight Towers, perhaps that can be incorporated in a Program Comment.

- Collocations on Other Non-Compliant Towers: FCC is encouraged to consult with stakeholders to explore measures that should be adopted to facilitate collocations on non-compliant towers. FCC has options for addressing the review of such towers that range from dismantling towers to enforcement actions. If such towers are constructed without a Section 106 review and subsequently proposed for collocations, FCC has to often conduct protracted reviews to determine they can be used for future communications activities. Perhaps FCC could explore the

feasibility of developing a program alternative such as a Program Comment for non-complaint towers that acknowledges the importance of these towers to the deployment of communications projects. An expedited review process could be developed in consultation with NCSHPO, NATHPO, Industry, and other interested parties that would allow collocations on non-compliant towers to proceed under certain circumstances. As noted above, it is important to know whether formal complaints have been filed with FCC regarding the non-compliant tower. In addition, FCC should determine whether construction of the original tower resulted in adverse effects on historic properties. If the SHPO and Indian tribe agree that there are "No Adverse Effects," the non-complaint tower could be approved for collocation. However, if the non-compliant tower resulted in adverse effects on historic properties, FCC should agree to implement a negotiated mitigation plan before future collocations could be approved.

- Conflating Section 106 and NEPA: The standards for defining the scope of the Commission's undertaking under Section 106 are different from those used to define the scope of a major federal action under the National Environmental Policy Act (NEPA). The ACHP objects to the idea of equating what triggers Section 106 responsibilities and defining its scope with how those issues are resolved under the NEPA. While Section 106 and NEPA very generally share functions (they're both environmental review statutes, and both require agencies to "stop, look, and listen"), they do not share triggering thresholds or the nature of their scopes. One only needs to look at the language of the statutes, as the District Court of D.C. did in Indiana Coal Council v Lujan, 774 F. Supp. 1385 (DDC 1991) (footnote 13), to understand that the similarities of the statutes do not extend to their triggers or scopes.

  NEPA requires Federal agencies to consider "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2) (C) (emphasis added). While the scope of the project needing consideration under NEPA is limited to "major" actions, Section 106 undertakings do not have such a qualifier. Any "... project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including ... those requiring a Federal permit, license or approval ...," whether it involves a major or a minor action, falls under the scope of Section 106. 54 U.S.C. 300320; 36 CFR § 800.16(y).

  Also, the NEPA scope is even further limited to those major Federal actions "significantly affecting" the environment. The qualifier "significant" is not found under Section 106 itself or the statutory and regulatory definition of "undertakings." While the term "major" reinforces but does not have a meaning independent of significantly, there is no qualifier at all in the definition of undertaking.

  Moreover, the scope of NEPA is further limited to "Federal actions," which implies that the action at issue must either be actually carried out by a Federal agency or have such a large degree of Federal involvement that it turns an otherwise private action into a "Federal" action. In contrast, the undertakings (projects, activities or programs) whose effects must be considered under Section 106 include those that are simply under the "indirect jurisdiction" of a Federal agency, such as those "requiring a Federal permit, license or approval."

  In addition, the NHPA was enacted late in 1966. NEPA was enacted less than four years later in 1970. If Congress wanted NEPA and 106 to have coextensive scopes, it knew about the language it used in the NHPA and would likely have used it in NEPA. But it didn't.

Finally, another part of the NHPA statute, added in 1980, makes it clear that the scope of NEPA and Section 106 are meant to be distinct. Specifically, 54 U.S.C. § 306111 states that: "Nothing in [the NHPA, including Section 106] shall be construed to— (1) require the preparation of an environmental impact statement where the statement would not otherwise be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or (2) provide any exemption from any requirement respecting the preparation of an environmental impact statement under that Act." If the Section 106 and NEPA scopes were meant to be coextensive, there would be no need for this section of the NHPA, since there would never be a conflict between the two in such a case.

As an overarching point in our comments, we note that the ACHP is given deference in interpreting Section 106 and in deciding whether an agency has complied with Section 106. See e.g., McMillan Park Comm'n v. National Capital Planning Comm'n, 968 F.2d 1283 (D.C. Cir. 1992); Morris County Trust for Historic Preservation v. Pierce, 714 F.2d 271 (3d Cir. 1983); National Center for Preservation Law v. Landrieu, 496 F. Supp. 716 (D.S.C.), aff'd per curiam, 635 F.2d 324 (4th Cir. 1980); National Indian Youth Council v. Andrus, 501 F. Supp. 649 (D.N.M. 1980), aff'd, 664 F.2d 220 (10th Cir. 1981); and National Min. Ass'n v. Slater, 167 F.Supp.2d 265, 280 (D.D.C. 2001).

Whether the entity owning or managing communications sites is or isn't an FCC licensee does not change the fact that, as noted above, the construction of such sites is a reasonably foreseeable, and therefore needs to be considered by the FCC for Section 106 purposes. We specifically recall this issue being raised, discussed, and resolved at least as far back as 2004.